



## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Part 217

### RIN 1601-AA67

#### Designation of Taiwan for the Visa Waiver Program

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Final rule.

**SUMMARY:** Eligible citizens, nationals and passport holders from designated Visa Waiver Program countries<sup>1</sup> may apply for admission to the United States at U.S. ports of entry as nonimmigrant aliens for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. On October 2, 2012, the Secretary of Homeland Security, in consultation with the Secretary of State and with reference to the Taiwan Relations Act of 1979, designated Taiwan for participation in the Visa Waiver Program. Accordingly, this rule updates the list of countries designated for participation in the Visa Waiver Program by adding Taiwan.

**DATES:** This final rule is effective on November 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Gianfranco Corti, Department of Homeland Security, Visa Waiver Program Office, (202) 282-8732.

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<sup>1</sup> With respect to all references to “country” or “countries” in this document, it should be noted that the Taiwan Relations Act of 1979, Pub. L. No. 96-8, Section 4(b)(1), provides that “[w]henver the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” 22 U.S.C. § 3303(b)(1). Accordingly, all references to “country” or “countries” in the Visa Waiver Program authorizing legislation, Section 217 of the Immigration and Nationality Act, 8 U.S.C. 1187, are read to include Taiwan. This is consistent with the United States’ one-China policy, under which the United States has maintained unofficial relations with Taiwan since 1979.

## **SUPPLEMENTARY INFORMATION:**

### **I. BACKGROUND**

#### **A. The Visa Waiver Program**

Pursuant to section 217 of the Immigration and Nationality Act (INA), 8 U.S.C. 1187, the Secretary of Homeland Security (the Secretary), in consultation with the Secretary of State, may designate certain countries as Visa Waiver Program (VWP) countries if certain requirements are met. Those requirements include, without limitation: (1) meeting the statutory rate of nonimmigrant visitor visa refusals for nationals of the country; (2) a government certification that it issues machine-readable passports that comply with internationally accepted standards; (3) a U.S. government determination that the country's designation would not negatively affect U.S. law enforcement and security interests; (4) an agreement to report, or make available through other designated means, to the U.S. government information about the theft or loss of passports; (5) the government acceptance for repatriation any citizen, former citizen, or national not later than three weeks after the issuance of a final order of removal; and (6) an agreement with the United States to share information regarding whether citizens or nationals of the country represent a threat to the security or welfare of the United States or its citizens.

The INA also sets forth requirements for continued eligibility and, where appropriate, probation and/or termination of program countries.

The current designated countries in the VWP include Andorra, Australia, Austria, Belgium<sup>2</sup>, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany,

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<sup>2</sup> After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver Program.

Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom.<sup>3</sup> See 8 CFR 217.2(a).

Citizens and eligible nationals of VWP countries may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements. To travel to the United States under the VWP, an alien must be from a participating country and must satisfy the following:

- (1) be seeking entry as a tourist for ninety days or less;
- (2) be a national of a program country;
- (3) present an electronic passport or a machine-readable passport issued by a designated VWP participant country to the air or vessel carrier before departure;<sup>4</sup>
- (4) execute the required immigration forms;
- (5) if arriving by air or sea, arrive on an authorized carrier;
- (6) not represent a threat to the welfare, health, safety or security of the United States;

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<sup>3</sup> The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries.

<sup>4</sup>For countries designated as VWP countries prior to November 17, 2008, passports issued before October 26, 2006, need not contain the electronic chip that includes the biographic and biometric information of the passport holder provided the passports comply with International Civil Aviation Organization machine readable standards. See 8 U.S.C. 1732(c)(2).

(7) have not violated U.S. immigration law during a previous admission under the VWP;

(8) possess a round-trip ticket;

(9) waive the right to review or appeal a decision regarding admissibility or to contest, other than on the basis of an application for asylum, any action for removal; and

(10) obtain an approved travel authorization via the Electronic System for Travel Authorization (ESTA). ESTA is an automated system that determines the eligibility of visitors to travel to the U.S. under the Visa Waiver Program. For more information about the ESTA, please see the interim final rule at 73 FR 32440 (June 9, 2008), and implementing notice at 73 FR 67354 (November 13, 2008). See sections 217(a) and 217(b) of the Immigration and Nationality Act (INA), 8 U.S.C. 1187(a)-(b). See also 8 CFR part 217.

## **B. Designation of Taiwan**

The Department of Homeland Security (DHS), in consultation with the Department of State, has evaluated Taiwan for VWP designation to ensure that it meets the requirements set forth in section 217 of the INA, as amended by section 711 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Pub. L. No. 110-53 (9/11 Act). The Secretary has determined that Taiwan has satisfied the statutory requirements for initial VWP designation; therefore, the Secretary, in consultation with the Secretary of State and with reference to the Taiwan Relations Act of 1979 (Pub. L. No. 96-8), has designated Taiwan for participation in the VWP.<sup>5</sup>

This final rule adds Taiwan to the list of countries authorized to participate in the VWP. Accordingly, beginning November 1, 2012, eligible travelers possessing Taiwan

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<sup>5</sup> The Secretary of State nominated Taiwan for participation in the VWP on December 22, 2011.

electronic passports with valid personal identification numbers (household registration numbers) may apply for admission to the United States at U.S. ports of entry as nonimmigrant visitors for a period of ninety days or less for business or pleasure without first obtaining a nonimmigrant visa, provided that they are otherwise eligible for admission under applicable statutory and regulatory requirements.

## **II. STATUTORY AND REGULATORY REQUIREMENTS.**

### **A. Administrative Procedure Act**

Under the Administrative Procedure Act (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. The final rule lists a country that the Secretary of Homeland Security, in consultation with the Secretary of State, has designated as a VWP eligible country in accordance with 8 U.S.C. 1187(c). This amendment is a conforming change to update the list of VWP countries. Notice and comment for this rule is unnecessary and contrary to the public interest, because the rule merely conforms the regulatory text to reflect the Secretary's designation of Taiwan as a VWP participant; it is technical in nature; and it relates only to management, organization, procedure, and practice. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

DHS is of the opinion that this final rule is also excluded from the rulemaking provisions of 5 U.S.C. 553 as a foreign affairs function of the United States, because it advances the President's foreign policy goals and directly involves relationships between the United States and its alien visitors. Accordingly, DHS is not required to provide

public notice and an opportunity to comment before implementing the requirements under this final rule.

### **B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (RFA) (5 U.S.C. 603(b)), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996 (SBREFA), requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions) when the agency is required “to publish a general notice of proposed rulemaking for any proposed rule.” Because this rule is being issued as a final rule, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

DHS has considered the impact of this rule on small entities and has determined that this rule will not have a significant economic impact on a substantial number of small entities. The individual aliens to whom this rule applies are not small entities as that term is defined in 5 U.S.C. 601(6). Accordingly, there is no change expected in any process as a result of this rule that would have a direct effect, either positive or negative, on a small entity.

### **C. Unfunded Mandates Reform Act of 1995**

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### **D. Executive Order 12866 and 13563**

As discussed above, DHS is of the opinion that the subject of this rulemaking constitutes a foreign affairs function of the United States, and thus is exempt from the provisions of Executive Order 12866. The Department has nevertheless reviewed this rulemaking to ensure its consistency with the regulatory philosophy and principles set forth in Executive Orders 12866 and 13563. DHS does not consider this final rule to be a “significant regulatory action” under Executive Order 12866, Sec. 3(f), *Regulatory Planning and Review*, and Executive Order 13563.

DHS plans to issue a final rule on the Electronic System for Travel Authorization (ESTA) and that final rule will respond to public comments received on the interim final rules related to ESTA. The final rule’s economic analysis will address the costs and benefits associated with the ESTA program, including the addition of Taiwan to the VWP. The VWP offers numerous security and economic benefits to the United States by promoting legitimate travel while enhancing security standards and information sharing with international partners.

#### **E. Executive Order 13132**

The rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, DHS has determined that this final rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

#### **F. Executive Order 12988 Civil Justice Reform**

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### **G. Paperwork Reduction Act**

The Department of Homeland Security is modifying OMB Control Number 1651-0111, Arrival and Departure Record, to allow eligible Taiwan passport holders to use the Electronic System for Travel Authorization (ESTA) to apply for authorization to travel under the VWP prior to departing for the United States. CBP uses the information to assist in determining if an applicant is eligible for travel under the VWP. The Department is requesting emergency processing of this change to 1651-0111 as the information is essential to the mission of the agency and is needed prior to the expiration of time periods established under the PRA. Because of the designation of Taiwan for participation in the VWP, the Department is requesting OMB approval of this information collection in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

The addition of Taiwan to the Visa Waiver Program will result in an estimated annual increase to information collection 1651-0111 of 240,000 responses and 60,000 burden hours. The total burden hours for ESTA, including Taiwan, is as follows:

Estimated annual reporting burden: 4,785,000 hours

Estimated number of respondents: 19,140,000 respondents

Estimated average annual burden per respondent: 15 minutes



## List of Subjects in 8 CFR Part 217

Air carriers, Aliens, Maritime carriers, Passports and visas.

### AMENDMENTS TO THE REGULATIONS

For the reasons stated in the preamble, DHS amends part 217 of title 8 of the Code of Federal Regulations (8 CFR part 217), as set forth below.

#### PART 217—VISA WAIVER PROGRAM

1. The general authority citation for part 217 continues to read as follows:

**Authority:** 8 U.S.C. 1103, 1187; 8 CFR part 2.

2. In § 217.2 the definition of the term “Designated country” in paragraph (a) is revised to read as follows:

#### § 217.2 Eligibility.

(a) \*\*\*

Designated country refers to Andorra, Australia, Austria, Belgium, Brunei, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands, New Zealand, Norway, Portugal, Republic of Korea, San Marino, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, and the United Kingdom. The United Kingdom refers only to British citizens who have the unrestricted right of permanent abode in the United Kingdom (England, Scotland, Wales, Northern Ireland, the Channel Islands and the Isle of Man); it does not refer to British overseas citizens, British dependent territories' citizens, or citizens of British Commonwealth countries. After May 15, 2003, citizens of Belgium must present a machine-readable passport in order to be granted admission under the Visa Waiver

Program. Taiwan (designated consistent with the Taiwan Relations Act of 1979, P.L. 96-8 and the United States' one-China policy) refers only to individuals who have unrestricted right of permanent abode on Taiwan and are in possession of an electronic passport bearing a personal identification (household registration) number.

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Janet Napolitano,  
Secretary.

[FR Doc. 2012-25986 Filed 10/19/2012 at 8:45 am; Publication Date: 10/22/2012]